TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. [illegible] 192

CHARLES BISCHOFF, PHILIP SMITH COXE, AND GEORGE COXE BOMPAS, PLAINTIFFS IN ERROR,

vs.

JOHN WETHERED.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

FILED JANUARY 5, 1869.

SUPREME COURT OF THE UNITED STATES.

No. 410.

CHARLES BISCHOFF, PHILIP SMITH COXE, AND GEORGE COXE BOMPAS, PLAINTIFFS IN ERROR,

vs.

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William Meade Addison, esq., for plaintiffs.
John H. B. Latrobe, esq., for defendant.

1 THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore, on the first Monday in November, (being the second day of the same month,) in the year of our Lord one thousand eight hundred and sixty eight—present, the Honorable William F. Giles, judge of Maryland district; Andrew Sterett Ridgely, esquire, attorney; Washington Bonifant, esquire, marshal; James W. Chew, clerk—among other were the following proceedings, to wit:

CHARLES BISCHOFF, PHILIP SMITH COX, George Cox Bornpas,
vs.
JOHN WETHERED.

Be it remembered that heretofore, to wit, on the eighteenth day of July, in the year of our Lord one thousand eight hundred and sixty-six, the said Charles Bischoff, Philip Smith Cox, & George Cox Bornpas, by William Meade Addison, esquire, their attorney, prosecuted and sued forth out of the circuit court here the writ of the United States of America of summons, directed to the marshal of Maryland district aforesaid, in the words and of the tenor following, to wit:

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

To the marshal for the Maryland district, greeting:

2 We command you that you summon John Wethered, a citizen of the State of Maryland, that, all excuses and delays set aside, he be and appear before the judges of the circuit court of the United States for the fourth circuit, in and for the Maryland district, to be held at the United States court-house in the city of Baltimore, on the first Monday in November next, to answer unto Charles Bischoff, Philip Smith Cox, George Cox Bornpas, aliens and subjects of the Queen of the United Kingdom of Great Britain & Ireland, in a plea of trespass on the case, &c. Hereof you are not to fail at your peril, & have you then and there this writ.

{ SEAL'S PLACE. }

Witness the Honorable S. P. Chase, Chief Justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and sixty-five.

Issued July 18, '66.

JAMES W. CHEW,
Clk Circuit Court.

[50-cents int. rev. stamp.]

At which mentioned first Monday in November, in the year of our Lord 1866, being the day of the return of the aforegoing writ, come into the circuit court here the said Charles Bischoff, Philip Smith Cox, and George Cox Bornpas, by their attorney aforesaid; and the marshal of the Maryland district aforesaid, to wit, Washington Bonifant, gentleman, to whom the said aforegoing writ was in form aforesaid directed, makes return thereof to the court here, thus endorsed, to wit:

3 Summoned:

W. BONIFANT, *U. S. Marshal.*

And the said John Wethered, being called, appears in court here by John H. B. Latrobe, esquire, his attorney. And thereupon, on motion of the said John Wethered, by his attorney aforesaid, it is ruled by the court here that the said Charles Bischoff, Philip Smith Cox, and George Cox Bornpas declare against the said John Wethered in the plea aforesaid, or judgment by the court here will be entered against them in default thereof. And the said Charles Bischoff, Philip Smith Cox, and George Cox Bornpas pray leave of the court here to imparle until the first Monday in April next, and they have it. The same day is given to the said John Wethered, then and there, &c.

At which said first Monday in April, to wit, the first Monday in April, in the year 1867, until which day the said Charles Bischoff, Philip Smith Cox, and George Cox Bornpas had leave to imparle and then to declare against the said John Wethered in the plea aforesaid, come again into the circuit court here the parties aforesaid by their attorneys aforesaid.

And the said Charles Bischoff, Philip Smith Cox, and George Cox Bornpas, by their said attorney, on the 3d day of October, in the year 1867, declared against the said John Wethered, on the plea aforesaid, in form following, to wit:

Declaration.

In the circuit court of the United States for the fourth circuit, in and for the Maryland district.

CHARLES BISCHOFF & OTHERS
vs.
JOHN WETHERED.

John Wethered, a citizen of the United States and of the State of Maryland, late of the district aforesaid, was summoned to answer unto Charles Bischoff, Philip Smith Cox, George Cox Bompas, aliens, and subjects of the Queen of the United Kingdon of Great Britain and Ireland, and residing in London in the said Kingdom of Great Britain, in plea that he render unto them the sum of ten thousand dollars, lawful money of the United States, which he owes to and detains from them, &c. And thereupon the said plaintiffs, by William Meade Addison, their attorney, complain: For that whereas the said plaintiffs heretofore, to wit, on the second day of June, in the year of our Lord eighteen hundred and sixty-six, by the consideration of the court of common pleas at Westminster of her Majesty the Queen of the United Kingdom of Great Britain and Ireland, recovered a judgment against the defendant, as well for the sum of seven hundred and twenty-eight pounds sterling, current money of the Kingdom of Great Britain, for their damages which they had sustained by occasion of the non-performance of certain premises and undertakings made and entered into before that time by the defendant to and with the plaintiffs, as also the sum of twenty-two pounds sterling, like current money, for their costs and charges by them
5 about their suit in that behalf expended; which said judgment still remains in that court in full force and effect, and in no wise satisfied, reversed, or annulled.

And the said plaintiffs in fact say that they have not yet obtained execution of the aforesaid judgment, and that the damages, costs, and charges aforesaid, in form aforesaid recovered, are of great value, to wit, of the value of ten thousand dollars of lawful money of the United States, to wit, at the district aforesaid; whereby an action hath accrued

to the said plaintiffs to demand and have of and from the said defendant the said sum of ten thousand dollars.

And whereas the said defendant heretofore, to wit, on the third day of April, in the year of our Lord one thousand eight hundred and fifty-seven, by a certain assignment in writing, signed by the said defendant, and sealed with the seal of the said defendant, in consideration of the sum of five hundred pounds sterling paid by the plaintiffs to the defendant, did grant and assign unto the said plaintiffs the one-fortieth share of the letters patent granted by her Brittanic Majesty Queen Victoria, on the 25th day of May, 1853, to a certain William Edward Newton, for "improvements in the generation of steam," and of which letters patent the said John Wethered (the defendant) claimed to be the sole beneficial proprietor, and by which assignment the said defendant did contract, agree, and stipulate with the plaintiffs that the said patent was in all respects valid and unimpeachable, and that the said defendant had good right to assign the said share thereof in manner
6 aforesaid, and that he, and all persons claiming under, through, or in trust for him, would do all such further acts as might be reasonably required for the further assurance of the said share in manner aforesaid.

And the said plaintiffs aver that said patent for the improvement in the generation of steam was not nor is valid and unimpeachable, but that the same was and is null and void; whereby an action had accrued to the plaintiffs to demand and have from the defendant the said sum of ten thousand dollars, to wit, at the district aforesaid.

And whereas, also, the said defendant afterwards, to wit, on the first day of July, in the year of our Lord one thousand eight hundred and sixty-six, at the district aforesaid, was indebted to the plaintiffs in the sum of ten thousand dollars, like lawful money of the United States, for so much money before that time lent and advanced by the plaintiffs to the defendant, at his request, and which the defendant promised to pay when he should be thereto requested, and which, although often requested by the plaintiffs to pay to them, the said defendant, hath wholly failed to repay; whereby an action hath accrued to the plaintiffs to demand and have of the said defendant the said sum of money.

And whereas, also, the said defendant afterwards, to wit, on the first day of July, in the year one thousand eight hundred and sixty-six, at the district aforesaid, was indebted to the said plaintiffs in another large sum of money, to wit, the sum of other ten thousand dollars, like lawful money of the United States, by the said defendant, before that
7 time had and received to and for the use of the said plaintiffs, and being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, undertook and then and there faithfully promised the said plaintiffs to pay them the said sum of money in this count mentioned when the said defendant should be thereunto afterwards requested, and which, although often requested by the plaintiffs to pay to them, the said defendant hath wholly refused and doth still refuse to do; whereby an action hath accrued to the said plaintiffs to have and demand of the said defendant the said sum of money.

And whereas, also, the said defendant afterwards, on the day and year last aforesaid, at the district aforesaid, accounted with the said plaintiffs of and concerning divers other sums of money, before that time due and owing from the said defendant to the said plaintiffs, and then being in arrear and unpaid; and upon such accounting the said defendant was then and there found to be in arrear and indebted to the said

plaintiffs in another large sum of ten thousand dollars, like lawful money of the United States, and being so found to be in arrear and indebted, the said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the district aforesaid, undertook and faithfully promised the said plaintiffs to pay them the last-mentioned sum of money when the said defendant should be thereto afterwards requested, and which, although often requested by the plaintiffs to pay to them, the said defendant hath wholly refused and doth still refuse to do; whereby an action hath accrued to the said plaintiffs to
8 demand and have from the said defendant the said sum of money.

And whereas, also, the said defendant afterwards, to wit, on the first day of July, in the year of our Lord one thousand eight hundred and sixty-six, at the district aforesaid, was indebted to the plaintiffs in the sum of ten thousand dollars, of the lawful money of the Kingdom of Great Britain, for money paid by the plaintiffs to the defendant, on a consideration which failed; whereby an action hath accrued to the plaintiffs to demand and have of the said defendant the said last-mentioned sum of money.

WM. MEADE ADDISON,
Attorney for Plaintiffs.

And thereupon the said Charles Bischoff, Philip Smith Cox, and George Cox Bornpas, by their attorney aforesaid, pray that the said John Wethered may answer to the declaration of them, the said Charles Bischoff, Philip Smith Cox, and George Cox Bornpas, on the plea aforesaid; whereupon it is ruled by the court here that the said John Wethered answer to the declaration of the said Charles Bischeff, Philip Smith Cox, and George Cox Bornpas, in the plea aforesaid, or judgment will be rendered against him in default thereof.

And the said John Wethered, by his said attorney, defends the force and injury, when, &c., and prays leave of the court here to imparle until the first Monday in November next, and he hath it. The same day is given to the said Charles Bischoff, Philip Smith Cox, and George Cox Bornpas, then and there, &c.

9 At which said first Monday of November, to wit, in the year 1867, until which day the said John Wethered had leave to imparle and then to answer the declaration of the said Charles Bischoff, Philip Smith Cox, and George Cox Bornpas, in the plea aforesaid, come again into the circuit court here the parties aforesaid, by their attornies aforesaid.

And now here, at this day, to wit, on the seventh day of February, in the year 1868, the said John Wethered, by his attorney aforesaid, files in court here the following plea, to wit:

Pleas.

In the circuit court U. S. for the district of Maryland.

JOHN WETHERED
ats.
CHARLES BISCHOFF AND OTHERS.

And the said John Wethered, by John H. B. Latrobe, his attorney, comes here into court, and, as to the first count in the plaintiffs' declaration, saith that the said plaintiffs should not have and maintain their aforesaid action against them, because, he says, that there is no such

record of such judgment in the said court as the said plaintiffs in their said declaration have alleged; and this he is ready to verify.

And the said John Wethered, for further plea in this behalf, by leave of the court here first had and obtained, saith that whatever may be the fact with regard to the said judgment, the same is of no force and effect, being the judgment of a court of another country outside of the jurisdiction of the courts of the United States; and this he is ready to verify.

10 And the said John Wethered, as to the second count in the declaration of the plaintiffs aforesaid, saith that he ought not to be charged in this action by virtue of the said assignment, because, he saith, that the said assignment is not his deed; and of this he puts himself upon the country.

And for further plea in this behalf, by leave of the court first had and obtained, the said defendant saith that whereas may be the fact with regard to the said assignment, it is not true, as stated in the said second count of the plaintiffs' declaration, that the letters patent mentioned therein were or are null and void as charged; and this he is ready to verify.

And as to the third, fourth, & fifth counts in the declaration of the plaintiffs, the said defendant saith that he did not undertake or promise as the said plaintiffs have in said counts alleged against him; and of this he puts himself upon the country.

JOHN H. B. LATROBE,
For Defendants.

Which said plea is thus endorsed, to wit:

Enter joinder of issue to the pleas & errors of pleading waived, & any evidence to be admitted which might be given in under any state of pleading.

JOHN H. B. LATROBE, *for Def't.*
WM. MEADE ADDISON, *for Pl'ffs.*

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties, by their attornies, and by order of the court here, thereon is further continued until the first Monday in April next.

11 At which said first Monday of April, to wit, in the year 1868, come again into the circuit court here as well the said plaintiffs, by their attorneys aforesaid, as the said defendant, by his attorney aforesaid.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties, by their attorneys, and by order of the court here, therein is further continued until the 1st Monday in November next.

At which said first Monday of November, to wit, in the year 1868, come again into the circuit court here as well the said plaintiffs as the said defendant, by their attorneys aforesaid.

Whereupon, for trying the issues aforesaid, it is ordered by the court here that twenty persons from the pannel of petit jurors, returned to the court here by the marshal of the Maryland district aforesaid, be drawn by ballot and written upon two lists, one of which said lists is delivered to the counsel for the respective parties; and the counsel for each of the said parties having stricken out four persons from the said lists, thereupon the remaining twelve persons being called, come, to wit: James H. Steele, Upton Scott, James Bradshaw, Richard H. Hyde, Samuel P. Storm, Jacob Pearce, Adam Wolf, F. Dorsey Herbert, Richard R. Waters

Richard H. Jones, William Hall, William B. Hammond, who, being empannelled and sworn to say the truth in the premises, upon their oaths do say that the said John Wethered did not undertake and promise in manner and form as the said Charles Bischoff, Philip Smith Cox,
12 and George Cox Bompas within against him have complained.

Therefore it is considered by the court here that the said Charles Bischoff, Philip Smith Cox, and George Cox Bompas take nothing by their writ and declaration aforesaid, but that they be in mercy for their false clamor, and that the said John Wethered go thereof without day, &c. And it is also considered by the court here that the said John Wethered recover against the said Charles Bischoff, Philip Smith Cox, and George Cox Bompas the sum of , by the court here unto him, the said John Wethered, on his assent adjudged for his costs and charges by him about his defence in this behalf laid out and expended, and that he have thereof his execution against the said Charles Bischoff, Philip Smith Cox, and George Cox Bompas, &c.

MEMORANDUM.—Before the jurors aforesaid withdrew from the bar of the court here, the said Charles Bischoff, Philip Smith Cox, and George Cox Bompas, by their attorney aforesaid, tendered to the court here the following bill of exceptions, which was by the court here signed and sealed, and which is in form following, to wit:

In the circuit court of the United States for the fourth circuit, in and for the Mary[Mary]land district.

CHARLES BISCHOFF, PHILIP SMITH COXE, & George Coxe Bompas
vs.
JOHN WETHERED.

At the trial of this cause, the plaintiffs, to support the issue on their part joined, read the following agreements of counsel:

13 In the circuit court of the United States, Maryland district.

CHARLES BISCHOFF & OTHERS
vs.
JOHN WETHERED.

It is agreed that either party may be at liberty to read in evidence on the trial in the circuit court or in the Supreme Court of the United States, any English statutes which appear in any book professing to be the English Statutes at Large, to have the same effect as if said statutes were regularly proved & authenticated.

And it is further agreed that the paper marked W. M. A. & J. H. B. L., No. 2, is a copy of a paper which is on record in the court of common pleas of England aforesaid; and that so far as to relieve the plaintiff from producing proof of its being a true copy of the original said paper may be used in the trial of the above cause, it being understood that nothing in this agreement contained shall be construed into an admission that the said paper or [or] anything therein contained is admissable as evidence in the premises, or to debar the defendant from taking any exception thereto which he might have made had the original been produced and offered.

WM. MEADE ADDISON,
Attorney for Pl'fs.
JNO. H. B. LATROBE,
Attorney for Defendant.

3RD MARCH, 1868.

In the circuit court of the United States, Maryland district.

CHARLES BISCHOFF & OTHERS
vs.
JOHN WETHERED

14 To save expense and delay it is agreed in this case that paper marked W. M. A. & J. H. B. L., No. 1, is a true copy of a judgment rendered in the court of common pleas in Great Britain, & may be read in evidence, to have the same effect as if regularly authenticated and proved.

That the parchment purporting to be "Specification of Moses Poole, esq'r, for improvements in steam-engines, steam-boilers, and furnaces, or fireplaces," and marked W. M. A. & J. H. B. L., No. 3, is an original document engrossed in her Majesty's (the Queen of England) high court of chancery, & may be read in evidence on the trial of this cause, to have the same effect & force as if the same were regularly authenticated and proved.

That the printed pamphlet marked W. M. A. & J. H. B. L., No. 4, is a true copy of the letters patent to William Edward Newton, the one-fortieth part whereof the said John Wethered assigned to the plaintiffs; being the same patent referred to in the proceedings in this cause.

WM. MEADE ADDISON,
Attorney for Plaintiff.
JNO. H. B. LATROBE,
Attorney for Defendant.

15 FEBRUARY, 1868.

The plaintiffs then offered in evidence the assignment by the defendant to the plaintiffs of the one-fortieth share in the patent granted to William Edward Newton for improvements in the generation of steam, which was admitted by the defendant, without other proof, to be the assignment of the defendant, and the signatures thereto to be the
15 genuine signatures of the defendant:

This indenture, made the third day of April, one thousand eight hundred and fifty-seven, between the Honorable John Wethered, [SEAL.] of Baltimore, in the United States, of the one part, and Charles Bischoff, Philip Smith Coxe, and George Cox Bompas, all of 19 Coleman street, in the city of London, solicitors, of the other part, witnesseth: That in consideration of the sum of five hundred pounds sterling, paid by the said Charles Bischoff, Philip Smith Coxe, and George Cox Bompas to the said John Wethered, the receipt whereof is hereby acknowledged, he, the said John Wethered, doth hereby grant and assign unto the said Charles Bischoff, Philip Smith Coxe, and George Cox Bompas, their executors and administrators, all that one-fortieth share of the letters patent granted by her present Majesty on the twenty-fifth day of May, one thousand eight hundred and fifty-three, to William Edward Newton, for "improvements in the generation of steam," and of which letters patent the said John Wethered is sole beneficial proprietor, to hold the said share and premises unto the said Charles Bischoff, Philip Smith Coxe, and George Cox Bompas, their executors, administrators, and assigns, absolutely. And the said John Wethered, for himself, his heirs, executors, and administrators, covenants with the said Charles Bischoff, Philip Smith Coxe, and George Cox Bompas, their executors, administrators, and assigns, that the said patent is in all respects valid and unimpeachable, and that the said John Wethered has good right to

assign the said share thereof in manner aforesaid; and that he, and all persons claiming through or in trust for him, will do all such further acts as may be reasonably required for the further assurance of the said share in manner aforesaid. In witness whereof, the said parties to these presents have hereunto set their hands and seals the day and year first above written.

JNO. WETHERED. [SEAL.]

Signed, sealed, and delivered by the above-named John Wethered in the presence of—

HENRY COLLINS,
Clerk to Messieurs Bischoff, Coxe & Bompas.

Received, the day and year first above written, of and from the above-named Charles Bischoff, Philip Smith Coxe, and George Cox Bompas, the sum of five hundred pounds, being the amount above mentioned to be paid by them to me. £500.

JNO. WETHERED.

Witness: HENRY COLLINS.

The plantiffs then offered in evidence, & read to the jury, the following papers mentioned in said agreements of counsel, and respectively marked W. M. A. & J. H. B. L., No. 1; W. M. A. and J. H. B. L., No. 2; W. M. A. & J. H. B. L., No. 3; W. M. A. & J. H. B. L., No. 4.

W. M. A. & J. H. B. L., No. 1.

Pleas enrolled at Westminster before the Right Honorable Sir William Erle, knight, and his brethren, justices of her Majesty's court of common bench of Trinity term, in the twenty-ninth year of the reign of our sovereign Lady Victoria, by the Grace of God, of the United Kingdom of Great Britian and Ireland, Queen, Defender of the Faith:

17 *Roll* 305.

In the common pleas.

The eighth day of February, in the year of our Lord one thousand eight hundred and sixty-six, Charles Bischoff, Philip Smith Coxe, and George Cox Bompas, in person, on the fourteenth day of September, in the year of our Lord one thousand eight hundred and sixty-five, sued out a writ of summons against John Wethered, not* being a British subject, then residing out of the jurisdiction of the superior courts of law at Westminster, elsewhere than in Scotland or Ireland, in the form contained in the schedule to the common law procedure act 1852, in that behalf, and having the endorsement required by the said act,* and the said John Wethered not having appeared to the said writ, it was afterwards, on the twenty-third day of January, in the year of our Lord one thousand eight hundred and sixty-six, ordered by the Honorable Mr. Justice Byles, on reading the affidavit of George Cox Bompas and R. F. Brent, that the plaintiffs should be at liberty to proceed in this action, by filing a declaration against the defendant that they should serve a notice requiring the defendant to plead to the said declaration in forty days, with particulars of the plaintiff's demand and a copy of the said order, and that, in default of the defendant pleading within the said forty days, the plaintiffs should be at liberty to prove the debt before one of the masters by affidavit, or otherwise, as the master should think

Pro brevibus comm.
Stamp.
Justiciarii.

COMMON PLEAS. [Crown.] OFFICE COPY.

* Amended by judge's order, (Kelly,) dated

5th October, 1866. No. 10.

fit, and to sign final judgment for the amount so found due
18 by the master; and thereupon the plaintiffs, pursuant to the said order, afterwards, on the eighth day of February, in the year of our Lord one thousand eight hundred and sixty-six, filed a declaration against the defendant in the following form, viz: In the common pleas. The eighth day of February, in the year of our Lord one thousand eight hundred and sixty-six, London, to wit, Charles Bischoff, Philip Smith Coxe, and George Cox Bompas, in person, sue the Honorable John Wethered, for that the defendant, by a deed made in London, in the county of Middlesex, and bearing date the third of April, one thousand eight hundred and fifty-seven, granted and assigned to the plaintiffs a one-fortieth share of the letters patent granted by her present Majesty, on the twenty-fifth day of May, one thousand eight hundred and fifty-three, to William Edward Newton, for improvements in the generation of steam, and by the said deed the defendant covenanted, for himself, his heirs, executors, and administrators, with the said plaintiffs, that the said patent was in all respects valid and unimpeachable; yet the said patent was not nor is valid and unimpeachable, but was and is wholly void; whereby the plaintiffs have lost the profits and advantages they would have made and received from the said patent if it had been valid, and have been put to much expence, and have been otherwise injured and damnified. And the plaintiffs also sue the defendant for money payable by the defendant to the plaintiffs, for money received by the defendant to the use of the plaintiffs, and for interest upon money due from the defendant to the plaintiffs, and foreborne at interest by the
19 plaintiffs to the defendant at his request, and for money found to be due from the defendant to the plaintiffs on accounts stated between them. And the plaintiffs claim one thousand pounds. And afterwards, on the twenty-sixth day of February, in the year of our Lord one thousand eight hundred and sixty six, the plaintiffs served on the defendant a notice requiring the defendant to plead thereto in forty days, with particulars of the plaintiffs' demand, and a copy of the aforesaid order; and the defendant made default in pleading to the said declaration, and afterwards the plaintiff proved his claim before William Morgan Benett, one of the masters of the court, and the said master found on such proof that the plaintiffs' claim amounted to seven hundred and twenty-eight pounds; therefore it is considered that the plaintiffs recover against the defendant the said seven hundred and twenty-eight pounds, together with twenty-two pounds for costs of suit. Judgment signed the 2nd day of June, 1866.

Stamp. 5 Shillings. | Stamp. 1 Shilling. | Stamp. 6 Pence.

13 folios—6s. 6d.

I certify that the above is a true copy of the roll, as amended, in the custody of the masters of the court of common pleas, at Westminster.

Dated the 30th of March, 1867.

W. M. BENETT,
One of the said masters.

1 Shilling Stamp.

W. M. A & J. H. B. L., No. 2.

In the common pleas.

20 BETWEEN CHARLES BISCHOFF, PHILIP SMITH COXE, and George Cox Bompass, plaintiffs,
and
THE HON'BLE JOHN WETHERED, defendant.

Instructions to attend Master Bennet, on Monday, the 23d April, 1866, at 2 o'clock p. m., to prove the pl't's case, pursuant to order of Mr. Justice Byles, of 13th Jan'ry, 1866, hereinafter set out.

The pl't's, Messrs. Bischoff, Coxe & Bompas, are solicitors, carrying on business at 19 Coleman street, London, and the def't, the Hon'ble Mr. Wethered, resides at Baltimore, in the United States. The action is brought for damages sustained by the pl't's, by the breach of the def'ts covenant with the pl't's, contained in a deed of assignment of 3d April, 1857, which purported to assign a one-fortieth share of a certain patent granted to a Mr. Wm. Edw'd Newton, for generating steam; that the s'd patent was valid and unimpeachable. The following is a copy of the assignment:

"This indenture, made the 3d day of April, 1857, between the Hon'ble John Wethered, of Baltimore, in the United States, of the one part, & Charles Bischoff, Philip Smith Coxe, & George Cox Bompas, all of 19 Coleman street, in the city of London, solicitors, of the other part, witnesseth: That in consideration of the sum of £500 sterling, paid by the s'd Charles Bischoff, Philip Smith Coxe, & George C. Bompas, to the said John Wethered, the receipt whereof is hereby acknowledged, he, the s'd John Wethered, doth hereby grant & assign unto the s'd Charles Bischoff,
P. S. Coxe, & Geo. C. Bompas, their executors & adm'ors, all that
21 one-40th share of the letters patent granted by her present Majesty, on the 25th day of May, 1853, to William Edw'd Newton, for 'improvements in the generation of steam,' & of which letters patent the s'd John Wethered is sole beneficial proprietor, to hold the s'd share & premises unto the s'd Charles Bischoff, Philip S. Coxe, & Geo. C. Bompas, their ex'ors, adm'ors & assigns, absolutely; and the s'd J. Wethered, for himself, his heirs, ex'ors, & adm'ors, covenants with the s'd Charles Bischoff, Philip S. Coxe, & Geo. C. Bompas, their ex'ors, adm'ors, & assigns, that the s'd patent is in all respects valid & unimpeachable, and that the s'd John Wethered has good right to assign the s'd share thereof, in manner af's'd, and that he, & all persons claiming through or in trust for him, will do all such further acts as may be reasonably required for the further assurance of the s'd share in manner af's'd.

"In witness whereof, the s'd parties to these presents have hereunto set their hands & seals, the day & year first above written.

(Signed) JNO. WETHERED. [L. S.]

"Signed, sealed, & delivered by the above named John Wethered, in the presence of—

"HENRY COLLINS,
"*Clerk to Messrs. Bischoff, Coxe & Bompas.*"

"Received, the day & year first above written, of & from the above-named Charles Bischoff, Philip Smith Coxe, & George C. Bompas, the sum of £500, being the amount above mentioned to be paid by them to me. £500

"JNO. WETHERED.

"Witness: HENRY COLLINS."

The amount of damages which the pl't's go for is the sum of £500, the amount paid by them to the def't for the s'd 40th share, and interest at 5 pr. ct. from 3rd April, 1857, the date of such pay-
22 ment. The writ was issued on the 14th Sept., 1865, & notice of same was afterwards served on the def't, and in default of his appearance Mr. Justice Byles made an order, of which the following is a copy:

CHARLES BISCHOFF & O'RS
v.
JOHN WETHERED.

Upon reading the affidavit of G. C. Bompas & R. F. Brent, I do order that the pl't be at liberty to proceed in this action by filing a declaration against the def't; that he do serve a notice requiring the def't to plead to the s'd declaration in 40 days, with particulars of the pl't's demand & a copy of this order; and that in default of the def't pleading within the s'd 40 days, the pl't be at liberty to prove the debt before one of the masters by affidavit or o'rwise, as the master shall think fit, & to sign final judgment for the amount so found due by the master.

Dated the 23d day of January, 1866. J. B. BYLES.

Pursuant to this order a declaration was filed on the 8″ of Feb'ry, 1866, and on the 26″ of the same month a notice to plead & particulars of demand, accompanied by a copy of the s'd order of Mr. Justice Byles, were served on the def't. The following are copies of the s'd declaration, notice to plead, & particulars:

In the common pleas.

THE 8TH DAY OF FEB'RY, *A. D.* 1866.

London, to wit, Charles Bischoff, Philip Smith Coxe, & George Cox Bompas in person, sue the Hon'ble John Wethered for that the def't, by a deed made in London, in the county of Middlesex, & bearing date the 3rd of April, 1857, granted & assigned to the pl't's a one-40th
23 share of the letters patent granted by her present Majesty, on the 25th day of May, 1853, to William Edw'd Newton, for improvements in the generation of steam, and by the s'd deed the def't covenanted for himself, his heirs, ex'ors, & adm'ors with the s'd pl't's that the s'd patent was in all respects valid & unimpeachable; yet the s'd patent was not nor is valid & unimpeachable, but was & is wholly void, whereby the pl't's have lost the profits and advantages they would have made & received from the s'd patent, if it had been valid, & have been put to much expense, & have been o'rwise injured & damnified. And the pl't's also sue the def't for money payable by the def't to the pl't's, for money received by the def't to the use of the pl't's, & for interest upon money due from the def't to the pl't's, & forborne at interest by the pl't's to the def't at his request, and for money found to be due from the def't to the pl't's on accounts stated between them. And the pl't's claim £1,000 in the common pleas.

BETWEEN CHARLES BISCHOFF, PHILIP SMITH COXE, and George Cox Bompas, pl't's,
&
THE HON'BLE JOHN WETHERED, def't.

Take notice that a declaration, dated the 8th day of February, in the year of our Lord 1866, is filed in the office of the masters of this hon'ble

court, situated in Chancery lane, London, in England, against you, at the suit of the above-named pl't's, & unless you plead thereto in 40 days, final judgment will be signed against you by default, pursuant to the order of the Hon'ble Mr. Justice Byles, made herein, & bearing date the 23rd day of January, 1866. Dated this 8th day of Feb'y, 1866.

Yours, &c.,

BISCHOFF, COXE & BOMPAS,
19 *Coleman Street, London, England, Pl't's in person.*

To the Hon'ble JOHN WETHERED,
The above-named Def't, his Attorney, or Agent.

24 In the common pleas.

BETWEEN CHARLES BISCHOFF, PHILIP SMITH COXE, & George Cox Bompas, pl't's,

THE HON'BLE JOHN WETHERED, def't.

The pl't's seek to recover, under the first count of the declaration, such damages as a jury or one of the masters may award for the breach by the def't of his covenant with the pl't's contained in a deed dated the 3d of April, 1857, & made between the def't & the pl't's, & which purported to assign a one-40th share of a certain patent for generating steam; that the said patent was valid and unimpeachable. The pl't's seek to recover, under the residue of the declaration, the sum of £500, being the price paid by them to the def't for the s'd share of the s'd patent, together with interest thereon from the date of the payment to the def't of the s'd sum of £500 until judgment.

Above are the particulars of the pl't's demand herein.

Dated the 8th day of Feb'ry, 1866.

Yours, &c.,

BISCHOFF, COXE & BOMPAS,
19 *Coleman Street, London, England, Pl't's in person.*

To the Hon'ble JOHN WETHERED,
The above-named Def't, his Attorney, or Agent.

The 40 days referred to in the s'd order of Mr. Justice Byles having now elapsed, the pl't's desire to prove their claim. To prove the fact of the assignment of the one-40th share of the patent by the def't to the pl't's; the covenant that the patent was valid & unimpeachable; & the payment of the purchase-money by the pl't's to the def't, Mr. Coxe, one of the pl't's, will produce the assignment executed by the def't, & will prove def't's handwriting thereto, & also to the receipt for the purchase-money.

25 The proof of the invalidity of the patent will be effected by a comparison of the specification with the specification of a former patent granted to a Mr. Poole for inventions embracing all that the present patent claims.

By the assignment already referred to it will be seen that the patent, in reference to which this ation is brought, is one granted to a Mr. Wm. Edw'd Newton, of 66 Chancery lane, Middlesex, & is dated the 25th May, 1853. It is described as one "for the invention of improvements in the generation of steam." A print of the provisional & complete specification is herewith left for perusal. A print also of the specification of the prior patent, granted on the 7th March, 1866, to Mr. Poole for "an invention of improvements in steam-engines, steam-boilers, &

furnaces or fireplaces," is left herewith, & it is submitted that by comparing this specification with that of Mr. Newton, there is nothing new in Mr. Newton's, & that Mr. Poole's invention embraces everything that Mr. Newton's pretends to, & a deal more.

Mr. Newton's invention is thus described in the provisional specification: "According to the ordinary method of generating steam and applying the same to motive purposes, such as for driving engines, the steam is usually conveyed direct from the upper part of the steam-boiler to the steam-chest of the working cylinder. The present invention consists in causing the steam, in its passage from the boiler to the engine, to pass through a pipe or tube which is placed in the fire-box, or arranged in some other convenient manner, so that it may be heated. By this means the steam from the boiler will become surcharged with caloric, & any watery particles that may come over with it will be converted into steam. By the temperature of the steam being thus considerably raised, its expansive force will be greatly increased without the expenditure of any additional fuel, & therefore a considerably increased motive force can be obtained from a given quantity of fuel than by the ordinary plan of conducting the steam direct from the boiler to the engine."

From this description it would seem that Mr. Newton's invention consisted simply in the heating of the steam in its passage from the boiler to the engine, thereby converting its accompanying watery particles into steam, and by that means raising the temperature of the whole, & increasing the expansive force & motive power. Mr. Newton, however, in his complete specification seems to go further, and to make a part of his invention consist in conducting heated steam & ordinary steam through separate pipes until they meet in one common receptacle, and mix of that pass together into the cylinder of the engine. He describes the invention in the complete specification thus:

"In carrying out this invention, two pipes are connected to the steam-chamber of a steam-boiler, one being passed directly to a steam-chest or reservior, intermediate between the boiler & the cylinder of the engine to be driven, and the other pipe, (which may be of any convenient form,) being conducted first through the furnace & thence to the steam-chest, with which, in its turn, is connected with the cylinder of the steam-engine. The steam passing through the first of the above-ment'd pipes is in a similar condition to that ordinarily used for motive-power purposes; that is, it is more or less dry, according to circumstances. The steam which is passed through the other pipe is, from being subjected to the heat of the furnace, converted into what is known as surcharged steam, or caloric gas, of a much higher temperature than that passing thro' the first-named pipe. When the contents of these pipes are discharged into the steam-chest common to both, or into a pipe leading to the steam-chest, any watery particles which the steam coming direct from the boiler may contain become at once converted into steam, & the heat expanding the volume of the whole steam about to pass from the chamber or pipe into the cylinder at the same time; the result is the working of dry steam at a greater pressure than if the steam had been permitted to pass directly into the cylinder in the usual manner."

After this description, Mr. Newton describes his claim as "the means hereinbefore described" of obtaining steam for motive-power purposes, "as well as for the various purposes for which it may be found applicable." It is submitted that by the words, "the means hereinbefore described," must be meant, in the first place, the heating steam so as to

convert the watery particles into steam, as described in Mr. Newton's provisional specification; and, 2dly, the heating steam and bringing the same, when so heated, into contact with ordinary steam, as described in his complete specification. It is submitted that both these inventions are embraced in Mr. Poole's invention. Mr. Poole, in describing his invention, says:

"The improvements consist in the employment of an apparatus to generate steam from the water drawn out of the boiler with the steam." This, it will be observed, is the same invention as that described in Newton's provisional specification; and with reference to the other part of Mr. Newton's alleged invention, the bringing heated steam into contact with ordinary steam, Mr. Poole, in his specification, p. 5, at the 17th line, says, (after having referred to the "heating of steam:")

28 "The steam thus reheated will be conducted to the steam-chest for distribution, but as the steam should not have a greater degree of temperature than the steam in the boiler, or only some few degrees more—otherwise the tow for stuffing would be burnt, and the oil for lubricating would be dried up—in order to obviate these inconveniences, I have a short thick tube communicating with the steam-boxes, into which the steam from the boilers, bringing with it the water as usual, also enters; the tube which conveys the reheated steam communicates also with the short thick tube. It will thus result that the reheated steam will become mixed with the same steam coming from the boiler before it arrives at the steam-boxes. There should be placed a cock at the tube which brings the reheated steam into the large tube, & also on the tube which conveys the steam & water from the boilers to the thick tube, & by opening the one or the other of these cocks, the temperature may be regulated, & the excess of heat will be employed to vaporize the excess of water with which it is saturated."

A case submitted to Mr. Hindmarch & his opinion are left herewith for counsel's perusal, from which it will be seen that Mr. Hindmarch advises that Newton's patent is invalid.

It is submitted that it is clear from the internal evidence of the two specifications that Mr. Newton's supposed patent is invalid, as referring to that which was not novel at the time, & that the pl't's have therefore parted with their money for that which is absolutely useless, & are entitled to recover it back, with interest, either under the special count in the declaration, as damages occasioned by the breach of the vendor's covenant, or under the indebitatus counts, as money had & re-

29 ceived by the def't to the pl't's use by reason of the total failure of the cons'on for the £500 paid by them.

Proofs.

The following is a copy of the order of the Hon'ble Mr. Justice Byles, dated 23rd Jan'ry, 1866, directing the pl't's to file a decl'on & serve def't with notice to plead, & particulars of demand; and that, in default of def't pleading, the pl't's were to be at liberty to prove their case before the master.

CHARLES BISCHOFF & O'RS
v.
JOHN WETHERED.

Upon reading the affidavit of G. C. Bompas & R. F. Brent, I do order that the pl't's be at liberty to proceed in this action by filing a declaration against the def't; that he do serve a notice requiring the def't to

plead to the s'd declaration in 40 days with particulars of the pl't's' demand, & a copy of this order; & that, in default of the def't pleading within the s'd 40 days, the pl't. be at liberty to prove the debt before one of the masters by affidavit or otherwise, as the master shall think fit, & to sign final judgment for the amount so found due by the master.

Dated the 23rd day of January, 1866.

J. B. BYLES.

Put in.

The following is a copy of the affidavit of Cyrus Irving Ditty, of Baltimore, United States, proving service on the def't of the s'd order, & of notice to plead, & particulars of demand, required by the terms of the s'd order to be served on def't:

In the common pleas.

BETWEEN CHARLES BISCHOFF, PHILIP SMITH COXE, & George Cox Bompas, pl't's,
&
THE HON'BLE JOHN WETHERED, def't.

30 I, Cyrus Irving Ditty, of the city of Baltimore, in the State of Maryland, in the United States of America, make oath & say that on the 26th day of Febr'y, 1866, I served a true copy of the order of the Hon'ble Mr. Justice Byles in this action hereunto annexed & marked A, & also a notice to plead in this action, with particulars of demand in this action annexed to such notice, (true copies of which notice & particulars are hereunto annexed, marked resp'ly B & C,) upon the abovenamed def't, the Hon'ble John Wethered, by delivering the s'd copy, order, notice to plead, & particulars of demand to the said def't, personally, at his residence at Wetheredsville, in Baltimore County, in the s'd State of Maryland. And I do further make oath & say that the word "dated," on the 10th line of copy of particulars of demand hereto annexed, marked C, having been marked out and the word "deed" substituted by interlineation therefor, so as to make the s'd paper correspond verbatim with the par'lars of demand that was served on the def't.

Affidavit of Cyrus Irving Ditty.—Put in.

Mr. John Hare Smith:

This witness, (a clerk of the pl't's,) will prove that he has had the conduct of this action on the part of the pl't's, & that the def't has not pleaded to the action. — John Hare Smith.

Mr. Philip Smith Coxe:

This witness is one of the pl't's, & will produce the assignment from the def't to the pl't's. It will be seen that the def't, — Mr. Philip Smith Coxe.

31 by the deed in question, conveys a 40th part of Newton's patent to the pl't's for £500, & covenants that the patent is valid & unimpeachable. It will also be seen that there is a receipt for the £500 cons'on money at the foot of the deed. This witness will prove the def't's handwriting to the assignment & the receipt. — Mr. Philip Smith Coxe, cont'd.

Call.

Specification of Newton's patent, dated 25th May, 1853, & specification of Poole's patent, dated 14th March, 1844.

The former of these specifications is that which forms the subject-matter of the present action. It will be seen that the latter patent is several years prior in date. By comparing the two specifications it will appear by their internal evidence alone that the latter embraces everything pretended to in Newton's patent, and that Newton's patent is neither "valid" nor "unimpeachable."

Put in specifications.

The above case has been proved before Master Benett, and he has certified that judgment is to be signed for £728 0 0, and judgment has been signed acc'ly.

W. M. A. & J. H. B. L., No. 3.

Patent. One Shilling.	Patent. Eight Pence.	Patent. Two Pence.

32 A. D. 1844. No. 10,107.

Steam-engines, steam-boilers, and furnaces.

POOLE'S SPECIFICATION.

To all to whom these presents shall come, I, Moses Poole, of Lincoln's Inn, in the county of Middlesex, gentleman, send greeting:

Whereas her present most excellent Majesty Queen Victoria, by her letters patent under the great seal of Great Britain, bearing date at Westminster, the fourteenth day of March, in the seventh year of her reign, did, for herself, her heirs, and successors, give and grant unto me, the said Moses Poole, her especial license, full power, sole privilege, and authority, that I, the said Moses Poole, my ex'ors, adm'ors, and assigns, or such others as I, the said Moses Poole, my ex'ors, adm'ors, or assigns, should at any time agree with, and no others, from time to time, and at all times during the term of years therein expressed, should and lawfully might make, use, exercise, and vend, within England, Wales, and the town of Berwick-upon-Tweed, my invention of "improvements in steam-engines, steam-boilers, and furnaces or fireplaces," communicated to me by a certain foreigner residing abroad; in which said letters patent is contained a proviso, and I, the said Moses Poole, shall cause a particular description of the nature of the said invention, and in what manner the same is to be performed, to be enrolled in her said Majesty's high court of chancery within six calendar months, next immediately after the date of the said in-part-recited letters patent, as in and by the same, reference being thereunto had, will more fully and at large appear.

33 Know ye that, in compliance with the said proviso, I, the said Moses Poole, do hereby declare the nature of the invention and the manner in which the same is to be performed are fully described and ascertained in and by the following statement thereof, reference being had to the drawings hereto annexed, and to the figures and letters marked thereon, (that is to say:) The improvements consist, first, in a mechanism which I call clearing apparatus, which is adapted below the

grate of the fireplace for the purpose of clearing out the fire and facilitating the introduction of air into the fuel. Second, in the employment of an apparatus to generate steam from the water drawn out of the boiler with the steam, and to regulate the temperature of the dry steam. Third, in the arrangement of a tubular generator with interior fireplace, constructed in a very simple way, and easy to clear. Fourth, apparatus destined to prevent explosions in steam-boilers. Fifth, in an apparatus to regulate and moderate the speed of steam-engines, whatever may be the variations of the moving power and the resistance thereto.

Description of the clearing apparatus for the grate, Figure 1, in Drawing No. 1, shews the apparatus adapted to the fireplace of a large copper having two boilers. Figure 2 is a plan, the frame having adapted to it projecting arms, which are destined to penetrate into the fire, passing between the two bars. There are only shewn upon the frame half the number of projecting arms that would be required to clear it out at a single action, but I prefer that it should be done
34 twice. Figure 3 shews the mechanism which, by the help of the handle D, serves in changing the position of the frame after the projecting arms have passed once into the fire between the fire-bars. In all the figures the same letters indicate the same parts. A A is the frame, having its bent projecting pieces. *a a a a* of the frame B B B' B are leavers or iron rods, to set in motion the frame-clearing apparatus for the grate. *b* and *c* are the axes of support and articulations of the apparatus. *e e* is a counter-weight nearly balancing the frame. C C are the rods which suspend the apparatus, and give the clearing-grate apparatus a horizontal motion when its projecting arms have penetrated into the bed of the fuel. *f f f f* are arms, making part with the levers B, and are connected together by means of the cross-piece *g g*, forming a handle to work the apparatus. D, shewn at Figure 3, is a handle to change the position of the frame A from right to left, or from left to right, in order that in time the projecting arms may pass through all the empty space between the fire-bars. E, Figure 1, is a small roller upon which the frame rests when it is in its lowest position, and which enables the frame to be easily changed without shaking and without much effort. F F F, bent piece, to limit the extent of the to-and-fro horizontal movement of the frame. G G are the fire-bars. *h h* are supported to the fire-bars to avoid their deformation. It would be best to increase the number of these supports and so to arrange them that the bars should fit one into the other, in order to render them more solid; by this means the destruction of the bars will be avoided, which might
35 sometimes occur, and thus prevent the functions of the clearing-grate apparatus. *i i* shew the bent ends of the fire-bars. These are kept in two small troughs always full of water, which may be kept full by any of the well-known apparatus for supplying water to vessels. The object of the water is to keep the fire-bars from attaining too great a temperature and deforming; or, in place of this arrangement, hollow fire-bars may be employed, with water or steam passing through them. The mode of working the clearing-grate apparatus is as follows: By pressing slightly upon the crossing-pieces B B, the projecting arms will be forced up, and enter between the fire-bars into the body of the fuel. Then by giving the cross-piece B a horizontal movement, the fuel is broken and raked about, and the ashes caused to fall down. The frame of the clearing apparatus for the grate should then be changed by means of the handle D, so that the projecting arms should enter between those bars which had not been cleared by the first operation; the handle must then be caused to act after having lowered the frame. In order to pre-

vent the boilers from being burnt by the direct action of the flame upon them, I construct a small brick arch, as thin as possible, shewn at H H in Figure 1, above the fireplace, or merely remove the fire-bars from the boilers.

I will now describe the clearing apparatus for the grate applied to locomotive engines. The Figures 1, 2, 3, 4, of Drawing No. 2, shews the clearing apparatus for the grate adapted to a locomotive. Figure 1, Drawing No. 2, shews a vertical and longitudinal section of the fire-
place, and of the back part of a locomotive, having the clearing
36 apparatus for the grate applied thereto. Figure 2 is a view of the same engine, shewing the back part of it, and where the cross-piece of the frame has been taken off. Figure 3 shews in plan part of the mechanism when in its place; a part of the iron plate is taken off to shew the mechanism. Figure 4 is a plan of the frame-clearing apparatus; the clearing apparatus acts with the fireplace in the same way as with other engines, but the mode of working of frame is different, because the firemen in locomotives are placed upon a platform much above the ash-pan, whilst with the other engines the firemen are placed on a level with the bottom of the ash-pan. A A, seen at Figures 1, 2, and 4, is the frame-clearing apparatus with its projecting arms. D, shewn at Figures 1, 2, 3, is a pedal on which the engineer presses with his foot when he requires that the arms of the apparatus should enter amongst the fuel. The motion is communicated by means of the lever E E E and the rod F acting upon the small arm A′, which supports the frame-clearing apparatus for the grate. G, shewn at Figures 1, 2, and 3, is a lever handle, which acts upon the frame and gives the horizontal rocking to-and-fro motion when the projecting arms are between the fire-bars, by means of a shaft, H H, and the rods I I; Figures 1 and 2 making the suspension of the frame. The course of the lever G is limited by the conical notch J J, in which the pin K moves, which pin may be fixed more or less low,
according to the length of course required. L is a handle by
37 which the change is made in the position of the frame when it is necessary to clean those parts of the fireplace which have not been done by the first operation. By turning the handle, motion is communicated to the frame through the rack M and the small lever N, which acts on the rods which suspend the frame, and thus cause the necessary change of position. O, shewn in Figures 2, 3, and 4, are counter-weights, to act as balances to a part of the weight of the frame. A second counter-weight may be placed upon the rod E. This rod E may be increased in length beyond the point of junction with the rod F, so as to carry the weight further from the fulcrum of the lever, by which arrangement a small weight will do. The same results may be obtained by other means than those I have described to act upon the fireplace. For example, instead of causing the projecting arms to enter between the fire-bars, I can, by means I will now describe, raise alternately, by one of their ends, all the bars of the grate, which would have the same effect upon the fuel to stir it, and to cause the ashes to fall down. The means I propose of raising the ends, one after the other, of the fire-bars, or several of them together, are, first, to employ a mechanism almost similar to that of the clearing apparatus, but with this difference, that the frame, instead of being furnished with a number of projecting arms for penetrating into the fuel, should have a single row of forked or bent arms to raise the bars; by this means one-half of the bars would be raised at one time, and the position of these forked pieces might be changed so as to raise the other bars by the arrangement of machinery before described. With this mode of raising the bars,

38 the mechanism for giving the to-and-fro motion to the pro
arms would be dispensed with. Another plan for raisi
bars would be by employing a cylender, having thereon a series of
which, being turned by means of a handle, would raise the bars one at
a time.

I will now describe the apparatus to turn into vapour the water which is drawn from the boiler with the steam, and also for regulating the temperature of the dry steam. Experience has shewn that in all steam-engines, more especially when applied for locomotive purposes, that there is a considerable loss of useful effect arising from, first, the water drawn into the cylender with the steam by the effect of boiling; second, in the cooling and partial condensation of the steam in the cylenders, and in the tubes along which the steam passes. The object of the clearing apparatus before described will be to increase the intensity of the fire, and consequently the ebullition; it will thence result, from the use of this apparatus, that a greater quantity of water will be forced into the cylenders with the steam. The means that I propose to prevent this evil are as follows: First, to heat again the steam coming from the boiler, and thus turn into steam any water that may come with it, and to prevent the condensation in the tubes and cylenders. To heat again the steam as it passes from the boiler, it must be passed through a coil of pipes, or any convenient method of getting a large surface, and
should be placed in the vent-holes in the interior of the chimney.
39 By this means there will be the advantage to increase the heating surface and to employ usefully a part of the lost heat. The steam thus reheated will be conducted to the steam chest for distribution; but as this steam should not have a greater degree of temperature than the steam in the boiler, or only some degrees more—otherwise the tow for stuffing would be burnt, and the oil for lubricating would be dried up—in order to obviate these inconveniences, I have a short thick tube communicating with the steam-boxes, into which the steam from the boilers, bringing with it the water, as usual, also enters the tube, which conveys the reheated steam communicated also with the short thick tube; it will thus result that the reheated steam will become mixed with the same steam coming from the boiler before it arrives at the steam boxes. There should be placed a cock at the tube which brings the reheated steam into the large tube, and also on the tube which conveys the steam and water from the boilers to the thick tube, and by opening the one or the other of these cocks the temperature may be regulated, and the excess of heat will be employed to vapourize the excess of water with which it is saturated. If the reheated steam possesses more heat than is sufficient to vapourize the water drawn in with the saturated steam, it may be passed through water kept in a separate vessel, or even in the tube where the two vapours are mixed together. It will be ascertained after the mixing of the steam what the temperature is, and whether it is mixed in suitable proportions. To ascertain the temperature, I place
in the large tube a thermometer similar to what I shall hereafter
40 describe in speaking of the apparatus to prevent explosions in boilers, shewn on the steam-tube of the boiler, Figure 1, Drawing No. 1, the arrangement I have just spoken of, furnished with its thermometer. The thermometer may be supplied by a metallic thermometer, which will open or shut the cocks, or one of them, in order to maintain the mixing in the proper proportions and temperature. In this case it will be better to employ slides or valves similar to those used to regulate the admission of the steam. By the use of the means which I have described for drying the steam, a great economy of fuel will be obtained and a great increase of moving power.

I will now describe my tubular generator with interior fireplace, fit to receive a clearing apparatus, and more especially to steam-vessels. The machines that I have before described to increase combustion as applied to a locomotive and stationary engine may be also applied with advantage to engines on board steam-vessels. The size of the boiler may be varied and the shape altered as may be required. Figures 5 and 6, Drawing No. 2, represent a boiler for a steamboat, to which the clearing apparatus may be applied. Figure 5 is a longitudinal, and Figure 6 a transverse, section of the generator; A A A A is the big cylender making the external casing of the boiler; B B is a cylender vertically placed on the boiler of which it depends and forming the steam-chamber; C is the fur-
41 nace or fireplace; D is the ash-pit; E E E E E E E E are the tubes of the boilers for the passage of the smoke; they are like those usually used in a locomotive engine-boiler, but these last are smaller; F is a man-hole; G is the steam-chamber; H is the float, (which will be described hereafter;) this float I prefer to be placed in a thin metal cylender having a quantity of holes perforated therein to decrease its weight; I is the pipe to supply the boiler; J is the pipe for the passage of steam to the cylender; K is a small stopper, which is to be moved when it is required to remove any cinders that may be deposited in the space L; M M is a box or case, in which a man may enter when it is required to clean out the smoke-tubes; N N is the chimney.

I will now describe the apparatus for preventing explosions in boilers. Figure 7 shows a section of the safety apparatus, which will be connected with the steam-boiler at the part marked O. In this apparatus there is a safety-valve of an ordinary float; *a* is a safety-valve which produces a whistle when the steam is escaping. This valve gives notice, first, when the steam is of a pressure greater than is necessary; second, when the water descends below the proper guage. The action of the apparatus in these two cases is as follows: The steam, when at a greater pressure than is required, passes away through the valve and through a bell-mouthed piece *b*, and by pressing against the angular sides, produces the whistling noise; and when the water has descended below the
42 proper guage, the float H by means of the lever and the forked piece C C opens the valve, which produces a whistling noise, as before explained, with this difference, that the noise instead of being continuous is intermittent by reason of the ebullition of the water which agitates the float. The advantage of this is, the cause of the whistling may be readily ascertained, whether proceeding from too great a pressure of steam, or the water having got below the proper level. The screw *d*, which is placed at the lower part of the forked piece C, is to regulate the apparatus when the valve is too soon or too late to show the effect of the decrease of the level of the water. Figure 8 shows a vertical of the whistling-valve on a large scale, as for execution. A A is the seal of the valve fixed to the apparatus; B B is the valve or moving part; C C is the bell-piece forming the whistle; D D is a steel rod, ended as a knife by the top connected to the lever E, which lever E presses on the valve; F F is the axis of the lever E, and is also in the form of a knife, and made of steel. The result of these shaped knife-bearings acting upon the parts of tempered steel is, that the valve moves freely. It should be remarked the movable part B of the valve is larger at the upper part than at the lower, which produces an increased force upon the valve when the steam raises it, as when the steam acts against a greater surface. It results from this, that the valve will be sufficiently open to allow of the steam produced to escape in such a manner that the pressure of steam in the
43 boiler should be more constant, which is not the case with the

ordinary valves. Figure 4 of the Drawing No. 1 shews another whistling apparatus, applicable to generators supplied with the clearing apparatus, whereby the steam being generated very rapidly, explosion of the boiler would be more likely to take place if there were not a good safety apparatus applied thereto. This apparatus is capable of giving notice when there is too little water in the boiler, and also when there is too much. This double advantage is obtained by means of a small valve which works by means of two floats, the one of which, by its own weight, opens the valve when the water evaporates, and the other opens the valve when the water encreases and loses part of its weight, and the valve on opening allows the steam to escape, and, by rushing against the sides of a similar bell to that before described, makes a great noise, which gives notice that the water in the boiler is either too high or too low. A, Figure 4, is the valve; B is the float which acts in opening the valve when the water has descended below the proper level; C is the float which opens the valve when there is too much water in the boiler; D is a weight to equalize a part of the weight of the float C, which should be of a given size and weight, whose weight should be too large if the material of the two floats be of the same density. The liquid should never arrive at the weight D. E E is the whistling bell; F F is a disc, around
44 which the steam passes to press upon the sides of the bell; G G is a spring to balance the float B, in case the float C, which is a counter-weight to it, should be made hollow or of a light material. This spring holds the float B, by means of the rod H H, the upper end of which is screwed to take into the eared screw I I, and in the cover J J, which presses upon the spring G. The spring may also be employed to balance the float B, when the float C is not employed. In place of the ordinary thermometer, a thermometer may be applied composed of a metal tube closed at one end, and which may contain mercury or any other fusible alloy. This may be placed about three-fourths of its length into the boiler, and by placing a good mercury thermometer, which will indicate the pressure of the steam by its temperature. In order to graduate properly the thermometer, I would recommend the work of Messrs. Arago & Dulong, who have made known the relation which exists between the temperature of steam and its pressure. This apparatus is shewn upon the steam-pipe of the boiler, Figure 1, Drawing No. 1. The defect in the usual centrifugal governor is, that when the balls have been moved beyond their original position, either to open or shut the valve, they cannot return to their original position without again changing the state of circumstances which caused them to move. The object of the apparatus is to avoid these inconveniences. A A, Figure 5,
45 is the ordinary governor; B are the balls; C is a rod which connects the apparatus to the ordinary governor, and by which the motion is communicated to it; D D D D is a fixed frame; E E is another sort of movable frame, which slides on the frame D; F F is a rod which communicates the movements of the frame E to the valve G; H is a counter-weight to the frame E; I I is an iron rod, which moves the frame E. This rod has projections *a* and *b* on it, which work against the sliding pieces *c* and *d*. These are arranged after the system of click and spring work of Mr. Dobo; they slide when pressed one way, but are fixed when pressed in the other. A represents one of these pieces, shewn full size at Figures 6, 7, and 8. *a* and *b*, in Figure 7, are the appendages or notches. The piece A slides when pressed on the part *a*, and resists when pressed on the part *b*. *e e* and *f f*, Figure 5, are the appendages of the pieces *c* and *d*. *g g* are projections fixed to the frame D. *h h* are springs to bring back the pins *c* and *d* to their places. These

springs act by means of a forked piece upon the rod around which they are rolled. Figures 9 and 10 shew this forked piece full size. *i i* are small cast springs, to cause a friction on the movable frame. The mode in which the apparatus acts is as follows: The different parts are represented in the drawings in the state they would be when the engine was working at the usual pressure, load, and speed; the two projections *a* and *b* of the rod I resting upon the two shoulders *e e* of the catches, and the other ones *f f* resting on the two fixed projections *g g* of the frame D. In this state the valve G is half opened.

46 I will suppose that it is required to increase the pressure of the steam, or that the resistance is decreased; then, as soon as the balls of the governor are extended, the rod I I will be raised, and draw up the movable frame E E, which will shut, more or less, the valve G by means of the rod F. The rod I acts upon the movable frame by means of the catch *c*, which has resisted the pressure of the projection *b*. During the time the catch *d* remains in its place, its shoulder *f*, in pressing against the fixed projection *g*, prevents its following the movable frame, and moves in its groove and compresses the spring *h*.

As soon as the governor has closed the valve the speed of the engine is checked and the balls can again approach each other without opening the valve; for this reason, that the catch *d*, which has remained in its place, will be at a distance from the projection *a*, which is the cause of opening the valve. This result cannot be produced with the ordinary governor, where every movement acts upon the valve; but if the governor had at first closed too much of the valve, and the speed of the engine gets below the speed at which it was started, then the projection *a* will press upon the shoulder *e*, and will open the valve to allow the steam to pass through in sufficient quantities to keep up the original speed. The springs *h h* are for the purpose of bringing down the catches to their original position when the projections *g g* do not oppose

47 them. The small springs *i i* are destined to cause a friction from the movable frame E E on the fixed frame D D; this friction serves to counteract the effect of the springs *h*, which otherwise would ever bring back the movable frame to its first position.

Having thus explained the nature of the invention and the manner of performing the same, I will explain that what I claim as the parts of the invention that I consider belong to me. And first, in the apparatus described for the purpose of increasing the combustion of fuel in furnaces or fireplaces, I claim the arrangments represented in the drawings, particularly the form of the projecting pieces or fingers of the rake apparatus by which they readily enter into the body of the fuel.

Second. In means of working the raking apparatus, whereby the fuel is stirred, and the cinders easily dislodged.

Third. In the means described for preventing the grate from attaining —great a temperature, so as to destroy the fire-bars.

Fourth. The mode of working the raking apparatus applied to locomotive engines.

In the apparatus for drying the steam, so as to prevent the water being carried into the cylender, I do not claim surcharging the steam, that having been done before. But what I claim is the mode herein described of regulating the temperature of surcharged steam by

48 mixing it with steam over saturated with water. I do not claim the arrangement of tubular boilers shewn as applied to steam. But what I claim is the so constructing tubular boilers that a person may enter into the boiler among the tubes, in order to clean or repair them. I also claim the mode of constructing the safety-valve

with float, and the whistling apparatus herein described. And lastly, in respect to the apparatus for regulating the speed of the engine, I claim the combining with an ordinary governor of a steam-engine the apparatus herein described.

In witness whereof, I, the said Moses Poole, have hereunto set my hand and seal the eighteenth day of July, in the year of our Lord one thousand eight hundred and forty-four.

MOSES [L. S.] POOLE.

And be it remembered that on the eighteenth day of July, in the year of our Lord 1844, the aforesaid Moses Poole came before our said Lady, the Queen, in her chancery, and acknowledged the specification aforesaid, and all and everything therein contained and specified in form above written. And also the specification aforesaid was stamped according to the tenor of the statute made for that purp ose.

Enrolled the fourteenth day of September, in the year of our Lord one thousand eight hundred and forty-four.

49 *W. M. A. & J. H. B. L., No. 4.*

A. D. 1853. No. 1,285.

Generating steam.

Letters patent to William Edward Newton, of the office for patents, 66 Chancery lane, in the county of Middlesex, civil engineer, for the invention of "improvements in the generation of steam."—A communication.

Sealed the 19th July, 1853, and dated the 25th May, 1853.

Provisional specification left by the said William Edward Newton, at the office of the commissioners of patents with his petition, on the 25th May, 1853.

1. I, William Edward Newton, do hereby declare the nature of the said invention for "improvements in the generation of steam," being a communication, to be as follows:

According to the ordinary method of generating steam and applying the same to motive purposes, such as for driving engines, the steam is usually conveyed direct from the upper part of the steam-boiler to the steam-chest of the working cylinder. The present invention consists in causing the steam, in its passage from the boiler to the engine, to pass through a pipe or tube which is placed in the fire-box, or arranged in some other convenient manner so that it may be heated. By this means the steam from the boiler will become surcharged with caloric, and any watery particles that may come over with it will be converted into steam. By the temperature of the steam being thus considerably raised, its expansive force will be greatly increased without the expenditure
50 of any additional fuel, and therefore a considerably increased motive force can be obtained from a given quantity of fuel than by the ordinary plan of conducting the steam direct from the boiler to the engine.

Specification in pursuance of the conditions of the letters patent filed by the said William Edward Newton in the great seal patent office, on the 25th November, 1853.

To all to whom these presents shall come, I, William Edward Newton, of the office for patents, 66 Chancery lane, in the county of Middlesex, civil engineer, send greeting:

Whereas her most excellent Majesty Queen Victoria, by her letters patent, bearing date the twenty-fifth day of May, in the year of our Lord one thousand eight hundred and fifty-three, in the sixteenth year of her reign, did, for herself, her heirs, and successors, give and grant unto me, the said William Edward Newton, her special license that I, the said William Edward Newton, my executors, administrators, and assigns, or such others as I, the said William Edward Newton, my executors, administrators, and assigns, should at any time agree with, and no others, from time to time, and at all times thereafter during the term therein expressed, should and lawfully might make, use, exercise, and vend within the United Kingdom of Great Britian and Ireland, the Channel Islands, and the Isle of Man, an invention for "improvements in the generation of steam," being a communication from a foreigner residing abroad, upon the condition (amongst others) that I, the said William Edward Newton, by an instrument in writing under my hand and
51 seal, should particularly describe and ascertain the nature of the said invention, and in what manner the same was to be performed, and cause the same to be filed in the great seal patent office within six calendar months next, and immediately after the date of the said letters patent:

Now, know ye, that I, the said William Edward Newton, do hereby declare the nature of the said invention, and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement, that is to say:

This invention, as communicated to me by my foreign correspondent, is thus described:

In carrying out this invention two pipes are connected to the steam-chamber of a steam-boiler, one being passed directly to a steam-chest, or reservoir, intermediate between the boiler and the cylinder of the engine to be driven, and the other pipe (which may be of any convenient form) being conducted, first, through the furnace, and thence to the steam-chest, which, in its turn, is connected with the cylinder of the steam-engine. The steam passing through the first of the above-mentioned pipes is in a similar condition to that ordinarily used for motive-power purposes; that is, it is more or less dry, according to circumstances. The steam which is passed through the other pipe is, from being subjected to the heat of the furnace, converted into what is known as surcharged steam, or caloric gas, of a much higher temperature than that passing through the first-named pipe. When the contents of these pipes are discharged into the steam-chest common to both, or into a pipe leading to the steam-chest, any watery particles which the steam
52 coming direct from the boiler may contain, become at once converted into steam, and the heat expanding the volume of the whole steam about to pass from the chamber or pipe into the cylinder at the same time; the result is, the working of dry steam at a greater pressure than if the steam had been permitted to pass directly into the cylinder in the usual manner. In case the draught of the cylinder is not sufficient to create the requisite current through the pipes, a cut-off or flutter-valve may be used, or any other convenient plan by which the caloric gas or hot air may be forced through the surcharging pipes.

It has been mentioned that the pipes for surcharging the steam are passed through the furnace; but this may not always be the best mode.

For example, when much heat escapes up the chimney it may be preferable to make this heat available for surcharging the steam by conveying the pipe containing the steam which is to be so operated upon into the chimney itself, or it may be found more economical to have a separate furnace for the heating of the surcharging pipes; or it may be found to be advantageous to have a separate boiler for the production of the surcharged steam or caloric gas; but circumstances must determine the best mode in each particular case.

By the use of superheated steam, combined with steam taken direct from the boiler, as above explained, a greatly increased motive power will be obtained without an increased expenditure of fuel. The rationale for this effect has been already given in explaining the action of the surcharged steam or caloric gas on the watery particles contained
53 in the steam which passes directly from the boiler to the steam-chest.

As a guide to the capacity of the pipes employed in carrying out this invention, it may be remarked that successful experiments have been carried on with a twelve-horse engine by the use of a steam-pipe two inches and three-eighths in diameter, and nine feet and a half in length, with a surcharging pipe one inch and a half in diameter and fifteen feet in length.

Having now set forth the nature of this invention of improvements in the generation of steam, and the manner of carrying the same into effect, I wish it to be understood that under the above in-part-recited letters patent I claim the means hereinbefore described of obtaining steam for motive-power purposes as well as for the various purposes to which it may be found applicable.

In witness whereof, I, the said William Edward Newton, have hereunto set my hand and seal this twenty-third day of November, in the year of our Lord one thousand eight hundred and fifty-three.

W. E. NEWTON. [L. S.]

Witness:
J. W. MOFFAT, 66 *Chancery Lane.*

The plaintiffs then read in evidence, by consent of defendant's counsel, the following letter, from Alexander Brown & Sons, dated Baltimore, 12th September, 1868:

54 BALTIMORE, 12*th Nov.*, '68.

WM. MEADE ADDISON, Esq.:

DEAR SIR: In answer to your enquiry we would state that a claim for £500, in Baltimore, at the rate to-day of 10 % for 3 d'ft, and 134 % for gold, would produce $3,275 56 in currency.

To place that sum in England by cable to-day, would be $32 83 in currency.

Yours, respectfully,

ALEX. BROWN & SONS.

And the defendant admitted that the rate of interest in England was five (5) per cent. per annum.

And the plaintiffs here rested their case.

The defendant then, to maintain the issue on his part joined, offered in evidence, by the defendant, John Wethered, who was examined as a witness, that he, together with his two brothers, were the inventors of the improvements in the generation of steam described in the above-

mentioned letters patent to William Edward Newton, marked W. M. A. & J. H. B. L., No. 4; that the said William Edward Newton, who was recommended to him as a reliable patent agent, procured for him the said patent.

The said John Wethered further proved that he visited the Paris exhibition in 1855 to exhibit a model of said invention, and that while there he was informed that a Monsieur Saurelle had made an
55 invention in some respects similar to his own. That thereafter the said Saurelle & himself had an interview which resulted in the purchase by the said Wethered from the said Saurelle, of all his interest in the letters patent for said invention issued to Moses Poole, and which is the letters patent to Moses Poole marked W. M. A. & J. H. B. L., No. 3; that the purchase from Saurelle of his interest in said letters patent was in 1855; was proceeding to offer further testimony by said Wethered which was not admitted by the court, when the defendant rested his case.

The plaintiff then offered the following two prayers:

Plaintiffs' first prayer.

The plaintiff prays the court to instruct the jury that the patent to William Edward Newton, in evidence in this cause, marked W. M. A. & J. H. B. L., No. 4, was not a valid and unimpeachable patent, inasmuch as the invention therein described was not novel, but was already substantially described in the specification of Moses Poole, in the paper given in evidence in this cause, marked W. M. A. & J. H. B. L., No. 3; and that, under the covenants contained in the assignment from the defendant to the plaintiffs, the plaintiffs are entitled to recover in this action the sum of £500 sterling, with interest thereon from the 3rd day of April, 1857.

56 *Plaintiffs' 2d prayer.*

And the plaintiffs further pray the court to instruct the jury that he is also entitled to recover, in addition to said sum, the further sum of £22, being the costs of suit in the judgment, the exemplifiation of which is marked W. M. A. & J. H. B. L., No. 1.

Each of which the court rejected, and the defendant offered the following three prayers:

The defendant prays the court to grant the following instructions to the jury:

1. That the judgment of the court of common pleas of England, which has been offered in evidence, is but prima facie evidence of the plaintiffs' claim, and may be rebutted by any matter which might properly have been offered in evidence for that purpose in the original action.

2. That in the absence of any evidence of such a proceeding as would be necessary, under the laws of England, to make void the patent of Newton, which has been offered in evidence, there is no evidence in this cause from which the jury can infer the invalidity of the patent aforesaid, (which is the basis of the plaintiffs' claim,) and the verdict must be for the defendant.

3. That there is not on the face of the respective patents of Newton and Poole, that have been offered in evidence, such an identity
57 as authorises this court to pronounce that they are for one and the same invention, and that for that reason the patent granted to Newton is invalid; and such invalidity being necessary to support the

plaintiffs' claim, and being wanting, the verdict must be for the defendant.

The first & third of which prayers the court granted, & rejected the second, the same not being material after the granting defendant's third prayer.

And thereupon the plaintiffs excepted to the refusal of the court to grant their prayers, & each of them respectively, and also excepted to the granting by the court of the first & third prayers offered on the part of the defendant, & to each of them respectively; and prayed the court to sign & seal this, their bill of exceptions, which is accordingly done, this 14th day of November, in the year of our Lord one thousand eight hundred and sixty-eight.

WILLIAM F. GILES. [SEAL.]

And now here, at this day, to wit, the 28th day of November, in the year of our Lord one thousand eight hundred and sixty-eight, the said Charles Bischoff, Philip Smith Cox, and George Cox Bornpas, produced to the said circuit court here the writ of the United States of America, for the correcting of errors of and upon the premises, commanding the record and proceedings of the judgment aforesaid, so as aforesaid
58 rendered, with all things concerning the same, to be transmitted to the Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December next, which said writ of error is in the words and of the tenor following, to wit:

59 UNITED STATES OF AMERICA:

The President of the United States of America to the judges of the circuit court of the United States for the fourth circuit, in & for the Maryland district, greeting:

[SEAL.] Because in the record & proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, between Charles Bischoff, Philip Smith Coxe, & George Coxe Bompas, plaintiffs, & John Wethered, defendant, a manifest error hath happened to the great damage of the said plaintiffs, as by their complaint appears; we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice be done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record & proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington on the first Monday in December next, in the said Supreme Court then & there to be held, that the record & proceedings aforesaid being inspected, the said Supreme
60 Court may cause further to be done therein to correct that error, what of right and according to the laws & customs of the United States should be done.

Witness the Honorable S. P. Chase, Chief Justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred & sixty-seven.

Issued the 28th day of November, 1868.

JAMES W. CHEW,
Clk Circuit Court.

61 In pursuance whereof, and according to the form and effect of the act of Congress in such case made and provided, the transcript

of the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things relating to the same, together with the said writ of error, are hereby transmitted to the said Supreme Court accordingly.

Writ of error bond.

Know all men by these presents, that we, Charles Cochran, jr., and David Keener, all of the city of Baltimore, in the State of Maryland, are held & firmly bound unto John Wethered in the full and just sum of three hundred dollars, to be paid to the said John Wethered, or his certain attorney, heirs, executors, administrators, or assigns, to the payment whereof, well & truly to be made & done, we bind ourselves, our heirs, executors, & administrators firmly by these presents.

Sealed with our seals, & dated this twenty-seventh day of November, eighteen hundred & sixty-eight.

Whereas in an action at law depending in the circuit court of the United States for the fourth circuit in & for the Maryland district, wherein Charles Bischoff, Philip Smith Cox, & George Cox Bormpas were plaintiffs, and John Wethered was defendant, at the November term, 1868, of said court, judgment was rendered in favor of said defendant, from which judgment the said Charles Bischoff, Philip Smith Coxe, &
62 George Cox Bompas have sued out a writ of error, returnable to the next term of the Supreme Court of the United States:

Now, the condition of the above obligation is such, that if the said defendant shall not cause a transcript of the record & proceedings of the said circuit court to be transmitted to the said Supreme Court within the time appointed by law, & prosecute the said writ of error with effect; and also satisfy and pay to the said John Wethered, his heirs, executors, administrators, or assigns, in case the said judgment shall be affirmed, the cost, & damages adjudged in the circuit court aforesaid, as also the costs & damages that may be awarded in the said Supreme Court, then the said bond to be & remain in full force & virtue; otherwise of no effect.

C. COCHRAN, JR. [SEAL.]
DAVID KEENER. [SEAL.]

Signed, sealed, & delivered in the presence of—
R. R. BATTEE.

Which said bond is thus endorsed, to wit:

"Bond approved 28 Nov., 1868.

"WILLIAM F GILES."

Citation.

63 The United States of America to John Wethered, greeting:

You are hereby cited to be & appear at a Supreme Court of the United States to be held at the city of Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fourth circuit, in and for the Maryland district, wherein Charles Bischoff, Philip Smith Coxe, and George Coxe Bompas are plaintiffs in error, and you are defendant in error, to shew cause, if any there be, why the judgment rendered against the said Charles Bischoff, Philip Smith Coxe, & George Coxe Bombas, as in the said writ of error mentioned, should not be corrected,

and why speedy justice should not be done to the parties in this behalf.

Witness my hand & seal this 28th day of November, in the year one thousand eight hundred & sixty-eight.

WILLIAM F. GILES. [SEAL.]

I acknowledge notice of the above citation, November 28th, 1868.

JOHN H. B. LATROBE,
Attorney for John Wethered.

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65 In testimony that the aforegoing is a true copy taken from the record and proceedings of the circuit court aforesaid, I have hereunto subscribed my name and affixed the seal of the said circuit court this second day of January, in the year of our Lord one thousand eight hundred and sixty-nine.

[SEAL.]

JAMES W. CHEW,
Clerk Circuit Court.

SUPREME COURT OF THE UNITED STATES,

No. 192.

CHARLES BISCHOFF, AND OTHERS,

PLAINTIFFS IN ERROR,

VS.

JOHN WETHERED.

BRIEF OF PLAINTIFFS IN ERROR.

CHARLES BISCHOFF, ET AL. vs. JOHN WETHERED. } IN THE SUPREME COURT *of the United States.*

This is an action brought to recover from the defendant in error, a sum paid by the Plaintiffs to the Defendant for the one-fortieth interest in a Patent for "*Improvements in the generation of Steam,*" granted by Queen Victoria to William Henry Newton, Agent of the Defendant, 25th of May, 1853. The claim is, for the breach of the covenant contained in the assignment from the Defendant to the Plaintiffs, "*that the said Patent is in all respects valid and unimpeachable.*" (Assignment Rec. 10.)

A judgment had been recovered by the Plaintiffs for breach of the covenant, in the Court of Common Pleas of Great Britain for £728, and for their costs £22.

The Plaintiffs in error relied for proof of breach of covenant, on the fact that a patent had been previously granted by Her Majesty to Moses Poole, 14th of March, 1844, for a machine which contained the same improvement substantially as that claimed by Wethered. (See Poole's Patent Rec. 16 to 23, and Newton's Patent Rec. 23, 24, 25.)

The Plaintiff having offered in evidence said Patents, and a record of the judgment of the Court of Common Pleas of Great Britain, there rested their case.

The defendant proved that in 1855, he was informed that a M. Saurielle had made an invention similar to his own; that he and Saurielle had an interview in Paris which resulted in the purchase by Wethered of all of Saurelle's interest in the letters Patent issued to Moses Poole.

The Plaintiff offered the following two prayers :

1. The Plaintiff prays the court to instruct the jury that the Patent to William Edward Newton, in evidence in this cause, marked W. M. A. and J. H. B. L. No. 4, was not a valid and unimpeachable patent, inasmuch as the invention therein described was not novel, but was already substantially described in the specification of Moses Poole, in the paper given in evidence in this cause, marked W. M. A. and J. H. B. L. No. 3 ; and that under the covenants contained in the assignment from the Defendant to the Plaintiffs, the Plaintiffs are entitled to recover in this action the sum of £500 sterling, with interest thereon from the 3d of April, 1857.

2. And the Plaintiffs further pray the court to instruct the jury that they are also entitled to recover, in addition to said sum, the further sum of £22, being the costs of the suit in the judgment, the exemplication of which is marked W. M. A. and J. H. B. L. No. 1. Each of which the court rejected, and the Defendant offered the following three prayers :

The Defendant then prayed the court to instruct the jury.

1. That the judgment of the Court of Common Pleas of England, which has been offered in evidence, is but *prima facie* evidence of the Plaintiff's claim, and may be rebutted by any matter which might properly have been offered in evidence, for that purpose in the original action.

2. That in the absence of any evidence of such a proceeding as would be necessary, under the laws of England, to make void the patent of Newton, which has been offered in evidence, there is no evidence in this cause from which the jury can infer the invalidity of the patent aforesaid,(which is the basis of the Plaintiffs claim,) and the verdict must be for the defendant.

3. That there is not on the face of the respective Patents of Newton and Poole, that have been offered in evidence, such an identity as authorises this court to pronounce that they are for one and the same invention, and that for that reason the Patent granted to Newton is invalid ; and such invalidity being necessary to support the Plaintiff's claim, and being wanting, the verdict must be for the defendant.

The first and third of which prayers the court granted, and rejected the second; as the same was held to be immaterial after granting the Defendant's third prayer.

The Plaintiffs will maintain:

1. That the patent to Newton was void, because the invention was not novel, the same being substantially described in the patent previously granted to Moses Poole.

Compare the apparatus to turn into vapor the water which is drawn from the boiler with the steam, and also for regulating the temperature of the dry steam in Moses Poole's patent, described on pages 19, 20 of the record, with the apparatus in the patent to Newton described on pages 24, 25.

2. That the judgment of the Court of Common Pleas of Great Britain, which the Defendant admits was *prima facie* evidence of the plaintiff's right to recover, became *conclusive*, because, in the language of the instruction, it was not rebutted by any matter which might properly have been offered in evidence for that purpose in the original action.

No evidence whatever was given to rebut the *prima facie* case made by the judgment in the original action. That judgment was over-ruled without any evidence of any import in addition to what was before the English court. In a word the United States Circuit Court sat merely as an Appellate Court, over-ruling the decision of the English court upon the construction of two English patents, which were to be construed by the English laws, and without any evidence to rebut the case before that court. The evidence of the defendant Wethered on page 26 of record, is of no import. He was only *informed* that Monsieur Saurielle had made an invention similar to his own. Saurielle is not proved to have been the constituent of Poole. His proof only shows that *one* Saurielle was *represented* to him to have made a similar invention, which only proves that besides Poole's invention, Saurielle also had anticipated him in his invention; but even if Wethered purchased Saurielle's right, and that was the invention described in Poole's patent, that does not validate the patent to Wethered. If Saurielle had invented the apparatus, the subsequent patent to Wethered would be void; besides, if Wethered had succeeded to

the rights of Saurielle, all he could sell to Plaintiffs, would be the rights he had under the Poole Patent, which would expire *nine* years before Wethered's Patent, had it been valid, would have expired.

Prima facie evidence becomes conclusive if not rebutted. "What is *prima facie* evidence of a fact? It is such as in judgment of law is sufficient to establish the fact, and if not rebutted remains sufficient for the purpose."

United States *vs.* Wiggins, 14 Peters, 347.

Kelly *vs.* Jackson, 6 Peters, 632.

There is added as part of the brief, the very lucid opinion of Mr. Hindmarch, to the effect that the Newton Patent is void, as being for an improvement, which had already been secured by letters patent to Poole.

WM. MEADE ADDISON,
Attorney for Appellants.

RE WETHERED'S PATENT.

CASE.

Mr. Hindmarch will receive herewith case laid before him in March, 1857, on the then position of Wethered's Patent for the use of Combined Steam.

Since that date circumstances have occurred which have wholly prevented Mr. Wethered from giving any attention to the subject of his patent; and affairs in America some time since obliged him to repair to his business at Baltimore. One of the firm has however now returned to this country, and on making inquiry of various persons connected with steam machinery, he finds that *super-heated steam is in very general use, and that in many cases his patent is infringed by the application of a second pipe*, by means of which super-heated steam can be mixed with the ordinary steam before it reaches the cylinder. In some instances this is in practice as a direct infringement, and in others two pipes exist, but with an assurance on the part of the ship owners, that they do

There is no doubt that the use of super-heated steam alone continues as it ever has been, a most dangerous application of a power that is found to be controlled only by the admission of the ordinary wet steam to lower its dangerous temperature, and that few vessels would venture to go to sea, without the precaution of having a second pipe through which the wet steam could be communicated to that super-heated.

Since the case was before Mr. Hindmarch, Poole's Patent was purchased by Mr. Wethered, and a question now arises in reference to the effect of that patent on Wethered's. A specification is herewith left, and it will be seen at page 5, that he specifies the very combination of steam which Wethered has patented, viz. the mixing of super-heated steam with ordinary steam before it arrives at the steam boxes or the cylinder.

It will be seen that the date of Poole's specification, is the 18th July, 1844, and that of William Edward Newton for Wethered, is dated 19th July, 1853. It does not however appear that Poole's Patent was ever in use, or that the public ever derived advantage therefrom or benefited by its application, and therefore Wethered's Patent taken out by Newton, may be considered, as it really was, that under which the invention was made known to the public, and brought into active operation. This patent of Poole's has expired by efflux of time.

Mr. Hindmarch's advice and opinion is now requested as to how far Poole's Patent affected that taken out by Newton, and whether, under the circumstances of its having lapsed, and that it can be established as a fact that nothing was done upon it, as also that it was assigned to Wethered, and has now terminated, it affects the validity of Newton's Patent; and he will also be good enough to say whether in those cases, where two pipes are inserted in the machinery: although it may not be proved mixing is used, the patent has been infringed.

The great difficulty which I have found in dealing with this case, has compelled me to take time to give it the fullest consideration.

Upon comparing the complete specification of Newton's Patent, (for Wethered's invention,) with the provisional specification, it appears that there is a considerable difference between the state-

The provisional specification states, that the invention consists in causing the steam in its passage from the boiler to the engine, to pass through a pipe placed in the fire box, or arranged in some other convenient manner, so that it may be heated. The effect of this heating upon the steam, and the increased motive force obtained are mentioned, but nothing is said about mixing, or apparatus for mixing, the heated with ordinary steam.

The provisional specification seems therefore to have been prepared in the belief that the heating of steam in its passage from the boiler to the cylinder of a steam engine, was new at the date of the application for the patent, and the probability is, that the mistake was discovered before filing the complete specification, which describes the invention in a very different manner.

The complete specification states that in carrying out the invention, two pipes are used for conveying steam from the boiler to the steam chest, one of the pipes for ordinary steam, and the other pipe for heated steam; the steam conveyed by the latter pipe being heated as it passes along, in any convenient manner. The advantage stated as resulting from the invention, is stated to be that the watery particles contained in the ordinary steam, are converted into steam, when the contents of the two pipes are discharged into the steam chest, and the result is stated to be the working of dry steam at a greater pressure than if steam had been permitted to pass directly into the cylinder in the usual manner.

The specification concludes with a claim "for the means herein before described of obtaining steam for motive power," and for other purposes.

Under this patent I think it is clear that the patentee could not claim the heating of steam on its passage from the boiler to the cylinder; because that was described in the specification of Poole's Patent of 14th March, 1844.

And I think that the proper construction of the claim in Newton's specification limits it to the mixing of ordinary with heated steam, as before described.

But unfortunately, it appears by Poole's specification, already mentioned, that it was not new to mix ordinary and heated steam in that way, for Poole in his specification, (as to a part of his in-

pipes for heating, the steam passing along them from the boiler to the cylinder, and also a tube for conducting ordinary steam from the boiler to the steam boxes of the cylinder, with which the heated steam tube communicates, and as the ordinary steam passes along that tube it is mixed with the heated steam.

Poole's specification states that the excess of heat will be employed to vaporize the excess of water, with which the steam from the boiler is saturated.

Poole describes apparatus for ascertaining the temperature of the mixed steam and for regulating the relative proportions of the two kinds of steam to be mixed together, which form no part of the apparatus used in carrying out Newton's invention; but I think those differences between Newton's and Poole's apparatus are not material to the present question.

It appears to me that Newton's and Poole's inventions are the same, so far as regards the use of two tubes for carrying steam from the boiler to the cylinder, the heating of the steam in one of the tubes, and the mixing of the ordinary and heated steam, before passing into the cylinder.

In working, according to each invention, also, the watery particles in the ordinary steam are converted into steam upon being mixed with the heated steam, and greater pressure, and increased motive power are in fact obtained.

Newton's specification seems to me to represent the benefit arising from the use of his invention, to consist in the conversion into steam, of the watery particles contained in the ordinary steam, resulting in the whole of the steam being dry, and working at greater pressure than ordinary steam.

Poole's specification states (page 6, lines 5 and 6,) that by the use of the means described for drying the steam, great economy of fuel will be obtained and greater increase of motive power.

It appears to me therefore, that there is no substantial difference between Newton's invention, and that part of Poole's invention above mentioned, and I am unable at present to see how Newton's Patent could be sustained in a Court of Law.

I think that neither the assignment of Poole's Patent to Mr. Wethered, nor the termination of it, vary the effect of the specifi-

Nor do I think that the fact that nothing was done under Poole's Patent, varies the effect of it upon Newton's Patent.

If indeed it could be clearly established, that Poole's specification does not give information sufficient to enable a competent workman to perform the invention, and that Newton's specification describes his invention so as to cure the defects in Poole's description, and enable a workman to carry the invention properly into effect, the validity of Newton's Patent would not be affected by Poole's prior Patent.

The use of two pipes in the way mentioned in the case, would probably induce a jury to find a verdict against a person having them in his machinery, upon the presumption that they would not be inserted in the machinery, except for the purpose of mixing the steam.

But I am of opinion that the use of heated steam not mixed with ordinary steam, would not be any infringement of Newton's Patent.

W. M. WINDMARCH.

TEMPLE, 5th November, 1864.

IN THE

Supreme Court of the United States.

CHARLES BISCHOFF AND OTHERS,

vs.

JOHN WETHERED.

BRIEF OF DEFENDANT IN ERROR.

THIS case comes upon a Writ of Error to the Circuit Court of the United States for the District of Maryland.

John Wethered is the inventor of a method of using, what is known as superheated steam in steam engines.

For this a patent was obtained by him in England, through his agent, Mr. William Edward Newton. The English patent is dated 25th May, 1853, and is in Newton's name.

About four years afterwards, Mr. Wethered assigned to Charles Bischoff, Philip Smith Coxe and George Coxe Bompas, one-fortieth share in the English patent, covenanting that the patent was in all respects valid and unimpeachable, and that he had a perfect right to assign the same. The consideration for the assignment was five hundred pounds sterling. The date of this transaction was April 3, 1857.

What was done with the interest thus assigned to them does not appear; nor are Messrs. Bischoff and others heard of, until the 8th February, 1866, when they commence a suit against Mr. Wethered, in her Majesty's Court of Common Pleas, filing a declaration, in which, after setting forth the above assignment, they say that the said patent was not, as covenanted that it should be, valid and unimpeachable, but was wholly void, to the injury of the Plaintiffs.

Inasmuch as Mr. Wethered was then, and had been, for many years in the United States, they procured service of notice upon him in Baltimore—requiring him to plead in forty days, and in default of his appearance, proceeded to take testimony before an English Master on the 23d April; when the above assignment was offered—together with the patent of Wethered and a patent granted to one Moses Poole, on the 18th July, 1846,—whereupon the Master certified that judgment should be signed in favor of the Plaintiffs for £728, and judgment was entered accordingly.

This judgment was then sent out to the United States, and suit commenced against Mr. Wethered on the 18th July, 1866.

The declaration contained five counts: First, on the English judgment; Second, upon the assignment to the Plaintiffs; Third, for money lent and advanced; Fourth, for money due on account; Fifth, on account stated.

To this the Defendant pleaded to the 1st count, *nul tiel record*, and that the English judgment was of no force in the United States; to the second, *non est factum*—and that the letters patent were not null and void, as charged; and to the third, fourth and fifth counts, *non assumpsit*.

When the case came on to be heard before Judge Giles, in the Circuit Court and a jury, the Plaintiff's counsel prayed the Court's instructions, in substance, that Poole's patent was for the same invention as Wethered's, and that there was a breach of the covenant in Wethered's assignment, and that the Plaintiffs were entitled to recover the

consideration with interest. A second prayer was that the Plaintiffs were entitled to recover £22, the costs of the English judgment.

These instructions the Court refused to give.

The Defendant, on the other hand, prayed the Court: 1st. That the English judgment was *prima facie* evidence only. 2d. That, in the absence of any proceeding such as would be necessary under the laws of England to vacate the Wethered patent, the verdict must be for the Defendant; and 3d. That upon the face of the Poole and Wethered patents there was no such incompatibility as invalidated the latter.

The Court granted the first and third instructions asked for by the Defendant, but refused the second, it not being material after granting the Defendant's third prayer.

Whereupon the Plaintiffs excepted to the granting of the Defendant's first and third prayers, as well as to the refusal to grant the Plaintiff's prayers—and the case is brought here upon Writ of Error.

In the argument in the Court below, no stress was laid upon the effect of the English judgment. The law of the Defendant's first prayer seemed to be conceded—and the discussion was had mainly upon the right of the Plaintiffs to determine the invalidity of the Defendant's patent collaterally, in action for a return of the consideration, and the question of invalidity, admitting that this was properly open to inquiry.

It is true that Judge Giles did not pass upon the Defendant's second prayer—and if the law is, as the prayer assumed it to be, inquiry into the compatibility of the two patents, would become unnecessary.

Inasmuch, however, as no exception was taken to the Court's refusal to decide the point raised by this prayer, the case is to be argued here upon the question whether the Poole patent of 1844 rendered the patent of Wethered of 1853 null and void, so as to give the Plaintiffs a right of

action for the recovery of the consideration for the assignment.

And this question, again, is to be determined by comparing the two patents, as they would be compared in the courts of England.

As to the identity of the patents of Poole & Newton.

Poole's patent is dated July 18th, 1844. He says,

"I will now describe the apparatus to turn *into vapour the water* drawn from the boiler with the steam."

Is not this error? does not steam, not vapour, do the work?

"The *means* I propose to prevent this evil is as follows:—First, to heat again the steam, &c., &c."

These means consist in a *combination*.

1.—A *coil of pipes* or any convenient method *for getting a large surface* placed in the vent holes in the interior of the chimney.

2.—A short thick tube, communicating with the steam boxes into which the steam from the boiler, bringing with it the water, as usual, enters.

3.—A cock at the tube which brings the re-heated steam into the large tube.

4.—A cock on the tube conveying the steam and water from the boilers to the thick tube.

(Opening one or other of these tubes, the temperature may be regulated.)

5.—If re-heated steam possesses more heat than is sufficient to vapourize the water drawn in with the saturated steam, it may be passed through water kept in a separate vessel—which is the 5th Element.

6.—To ascertain the temperature—*a thermometer* as shewn in Fig. 1, Drawing 1,

which may be an automatic, metallic one.

"By the use of the means which I have described for *drying the steam*, a great economy of fuel will be obtained, and a great increase of moving power."

The whole of this specification is based on the idea that the *steam must not be increased in temperature*, and, to prevent this, a complicated contrivance in which the use of a thermometer, &c., is employed : a combination of six parts.

These were the means he employed is his patent.

The claim is—"the *mode herein described of regulating the temperature of discharged* steam by mixing it with steam or saturated with water."

Now for Wethered's patent.

Here is a combination of pipes also.

1.—The common steam pipe through the fire.

2.—The pipe direct from the boiler,

thus—

"In carrying out this invention, two pipes are connected to the steam chamber of a Steam Boiler, one being passed directly to a steam chest or reservoir immediately between the boiler and the cylinder of the engine to be driven, and the other pipe (which may be of any convenient form,) being conducted first through the furnace, and thence to the steam chest, which, in its turn, is connected with the cylinder of the steam engine.

"The steam passing through the first of the above mentioned pipes, is in a similar condition to that *ordinarily* used for motive power purposes, that is, it is more or less dry, according to circumstances.

"The steam which is passed through the other pipe is, from being subjected to the heat of the furnace, converted into what is known surcharged steam or caloric gas, of a much higher temperature than that passing through the first named pipe.

"When the contents of these pipes are discharged into the steam chest common to both, or into a pipe leading to the steam chest, any watery particles which the steam coming direct from the boiler may contain, become at once converted into steam, and the *heat expanding the volume* of the whole steam about to pass from the chamber or pipe into the cylinder at the same time, *the result is the working of dry steam* AT A GREATER PRESSURE *than if the steam had been permitted to pass directly into the cylinder in the usual manner.*"

"I claim the means hereinbefore described, of obtaining steam for motive power purposes, as well as for the various purposes to which it may be found applicable."

We thus see that Wethered's patent was in its results *to teach the public how to work dry steam at a greater pressure* than if the steam had passed directly from the boiler to the cylinder.

And his title is for *improvements in the generation of steam.*

Poole's Patent is for *Improvements in Steam Engines, Steam Boilers* and *Furnaces of Fire Places.*

His improvements:—*first*, a mechanism—for cleaning out the fire.

second, the employment of an apparatus to generate steam from the water drawn out of the boiler with the steam, and *to regulate the temperature of the dry steam*,—reducing it to that of the boiler.

Describing No. 1,—he then goes on to describe the apparatus to turn into vapour the water which is drawn from the boiler with the steam, and also for regulating the temperature of the dry steam.

——that is to say, the volume of steam, when the water being turned into steam the whole becomes dry—

He then says:

"*The object of the cleaning apparatus* before described will be to increase the *intensity of the fire* and consequently the ebullition. ☞ It will thence result, from the use of this apparatus, that *a greater quantity of water will be forced into the cylinders with the steam.* The means that I propose to remedy this evil are as follows:

The evil is to make more water go over than usual, which must be disposed of.

"To heat again the steam as it passes from the boiler it must be passed through a coil of pipes or any convenient mode of getting a large surface, and should be placed in the vent holes in the interior of the chimney. By this means there will be the advantage to increase the heating surface and to employ usefully a part of the lost heat—the steam thus re-heated."

The heat abstracted by the extra quantity of water forced over as above—the ebullition

"will be conducted to the steam chest for distribution. But as this steam *should not have a greater degree of temperature than the steam in the boiler*, or only some few degrees more, otherwise, &c.—to obviate these inconveniences I have a short, thick tube, &c."

Then the provision about the cocks to prevent the steam having a greater degree of temperature than the steam in the boilers.

"If the re-heated steam possesses more heat than is sufficient to vaporise the water drawn in with the saturated steam, it may be passed through water kept in a separate vessel, &c. To ascertain the temperature, &c."

Then

"by the use of the means for drying the steam a great economy of fuel will obtain, and a great increase of moving power."

He then claims under two heads.

first, as regards "the apparatus described *for the purpose of increasing the combustion of fuel* in furnaces or fire places.

And then,—in the *apparatus for drying steam* so as to prevent the water being carried into the cylinder. "I do not claim surcharging the steam, *that having been done before*, but what I claim is *the mode* herein *described of regulating the temperature* of surcharged steam by *mixing it with steam over saturated with water.*"

Stated more briefly, the differences between Poole and Newton are as follows:

1.—Newton begins with steam

"in a similar condition to that *ordinarily* used—which may be more or less dry according to circumstances."

Poole begins with an invention—the leading one in his specification, whose object is to *increase the intensity* of the *fire and consequently* the *ebullition*, producing the evil of giving to the steam *a greater quantity* of water than would be there without this apparatus,

in other words

The steam he operates on is *not in a similar condition to that ordinarily used*—and which is not more or *less dry*, but very wet—an evil that he wants to remedy.

The subject matter operated on by the two inventions is not the same—to begin with.

Then as to the effect of the means employed on the subject matter.

Newton's means work the dry *steam at a greater* pressure than if the steam had been permitted to pass into the boilers directly in the usual manner.

Poole's means are all directed to preventing the steam having a greater temperature than the steam in the boiler—or having more than some few degrees greater.

Newton relies on the heat to expand *the volume of the whole steam.*

Poole wants merely to *dry the steam* made wet by his heating apparatus above ordinary steam—and to avoid, in drying it, heating it sufficient to burn the packing, &c.

Newton wishes to surcharge his steam to make caloric gas of it.

Poole afraid of this makes an invention, which is in the language of his claim, to regulate its temperature.

Supposing that the use of surcharged steam, or superheated steam is advantageous, and disregarding the destruction of packing of tow, &c. Wethered's or Newton's invention shews how it may be used.

Poole supposing it disadvantageous, but still wanting to use it to dry his wet steam, made unusually wet by his own invention, makes an apparatus by which it can be used without risk by regulating its temperature.

Poole's specification if followed would prevent the use of steam which Newton's patent claims the use of—*superheated steam.*

Newton says, use superheated steam and obtain it, thus and so, in driving your engine.

Poole says, you must not use it to drive your engine, which must be driven by ordinary steam or steam heated but a few degrees above ordinary steam, except you use it to dry the steam made more than ordinarily wet by my mode of firing.

In other words Poole's invention is considered by himself as an appendant to his mode of firing.

Can it be said then that these two patents are for the same thing when their objects are diametrically different. One *to make the heat, not merely dry the steam, but to expand its whole volume.* The other, dreading the expansion materially, confining the heat to the process of drying only.

Poole in 1844, dreading surcharged steam, and yet finding it useful to dry ordinary steam, invented a contrivance for regulating its temperature—a method with six elements of combination.

Newton in 1853, desiring to use surcharged steam, shews the world how it can be produced in the simple method he describes with but two elements in combination.

It is therefore contended that the ruling of the Court below should be affirmed.

JOHN H. B. LATROBE,
For Defendant in Error.